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13
14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 ORACLE USA, INC., a Colorado corporation;
17 ORACLE AMERICA, INC., a Delaware
18 corporation; and ORACLE INTERNATIONAL
19 CORPORATION, a California corporation,

20 Plaintiffs,

21 v.

22 RIMINI STREET, INC., a Nevada corporation;
23 and SETH RAVIN, an individual,

24 Defendants.

25 Case No. 2:10-cv-0106-LRH-PAL

26 **APPENDIX III IN SUPPORT OF**
DEFENDANTS' OPPOSITION TO
ORACLE'S RENEWED MOTION
FOR A PERMANENT INJUNCTION

27 **RIMINI'S SPECIFIC OBJECTIONS**
TO ORACLE'S PROPOSED
INJUNCTION

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10 **Appendix IV:** Exhibits
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12 Volume I
13

14 Exhibit A: *Oracle USA, Inc. v. Rimini St., Inc.*, 879 F.3d 948 (9th Cir. 2018).
15

16 Exhibit B: Excerpts of Oral Argument Transcript from Ninth Circuit
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18 Exhibit C: Rimini Declarations Regarding Changed Processes
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20 Exhibit D: Jury Verdict
21

22 Exhibit E: Jury Instructions
23

24 Exhibit F: Permanent Injunction
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26 Exhibit G: Ninth Circuit Order Staying Permanent Injunction Pending Appeal
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28 Exhibit H: Slide 34 from Rimini's Permanent Injunction Argument
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30 Exhibit I: Cited Testimony of Safra Catz
31

32 Volume II
33

34 Exhibit J: Cited Testimony of Seth Ravin
35

36 Exhibit K: Cited Testimony of Kevin Maddock
37

38 Volume III
39

40 Exhibit L: Cited Testimony of Edward Yourdon
41

42 Exhibit M: Cited Testimony of Former Oracle Customers
43

44 Exhibit N: Cited Testimony Regarding Oracle Improved Attrition
45

46 Exhibit O: Oracle's Internal Reports Regarding Customer Satisfaction
47

48 Exhibit P: Cited Testimony of Elizabeth Dean Regarding Damages
49

50 Exhibit Q: Declaration of Brian J. Slepko Regarding Costs of Overbroad Injunction
51

52 Exhibit R: Oracle's Trial Exhibit 3
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54 Exhibit S: Oracle's Trial Exhibit 2155
55

Appendix III:

Rimini's Specific Objections to Oracle's Proposed Injunction

1
APPENDIX III

2 **RIMINI'S SPECIFIC OBJECTIONS TO ORACLE'S PROPOSED INJUNCTION**

3 Rimini hereby submits the following objections to Oracle's proposed injunction. Oracle's
 4 proposed injunction is fatally flawed for numerous reasons, most critically that it (i) prohibits
 5 conduct far beyond the scope of the Ninth Circuit's narrow rulings on infringement, and (ii) fails to
 6 provide Rimini with adequate notice of what conduct is enjoined because it is unduly vague and
 7 overbroad. *See Columbia Pictures Indus., Inc. v. Fung*, 710 F.3d 1020, 1047 (9th Cir. 2013) (Rule
 8 65(d) is intended "to prevent uncertainty and confusion on the part of those faced with injunctive
 9 orders, and to avoid the possible founding of a contempt citation on a decree too vague to be
 10 understood"); *Price v. City of Stockton*, 390 F.3d 1105, 1117 (9th Cir. 2004) (injunction "must be
 11 narrowly tailored ... to remedy only the specific harms shown by plaintiffs, rather than to enjoin all
 12 possible breaches of the law"). Rimini respectfully requests that the Court reject Oracle's proposed
 13 injunction.

14 For the Court's convenience, Rimini's specific objections are listed below and interlineated
 15 in Oracle's proposed injunction. To the extent they are not included herein, these objections are in
 16 addition to those made in Rimini's brief in opposition to Oracle's renewed motion for a permanent
 17 injunction.

- 18 1. Objection 1: This language is vague and overbroad, fails to provide adequate notice
 19 of what conduct is enjoined, and would create uncertainty and confusion.
- 20 2. Objection 2: This language is vague and overbroad in that it requires notice to persons
 21 based on the prohibited acts. It also requires notice to persons, such as Rimini's
 22 "affiliates" and "subsidiaries," that are not covered by Federal Rule of Civil Procedure
 23 65(d) or otherwise defined in Oracle's proposed injunction. The provision should
 24 require notice only to persons directly involved in support for the specific products.
- 25 3. Objection 3: This language prohibits more conduct than the Ninth Circuit adjudicated
 26 infringing. *See Oracle USA, Inc. v. Rimini St., Inc.*, 879 F.3d 948 (9th Cir. 2018).
- 27 4. Objection 4: This language seeks to rewrite and expand the restrictions in the licenses,

1 which do not refer to specific conduct that is permitted.

- 2
- 3 5. Objection 5: This language is an impermissible obstacle to competition. If conduct
4 is licensed, then there is no requirement to affirm it in writing. Moreover, as the Ninth
5 Circuit acknowledged, “[a]ll of Rimini’s customers pertinent to this dispute were
6 licensees of Oracle’s software.” 879 F.3d at 952 n.1 (emphasis added). Rimini was
7 never held liable for providing Oracle’s copyrighted materials to any customer
8 without a valid license, and therefore there is no basis for requiring that licensees
9 affirm in writing that they are licensees.
- 10 6. Objection 6: The Ninth Circuit upheld liability based on the reproduction right (*see*
11 17 U.S.C. § 106(1))—not on the distribution or derivative works rights (*see id.*
12 § 106(2)–(3)). *See* 879 F.3d at 952–53, 956–57, 959–60.
- 13 7. Objection 7: The term “specific licensee’s own computer systems” is vague,
14 undefined, and overbroad in view of the Ninth Circuit’s holding that only the
15 PeopleSoft licenses—and not the licenses for the other produce lines—contained a so
16 called “facilities” limitation limiting copying to servers over which the licensee
17 retains actual or constructive control. *See* 879 F.3d at 958–60.
- 18 8. Objection 8: The term “internal data processing operations” is overbroad and vague,
19 and has never been defined by this Court. The full scope of this contractual phrase is
20 at issue in *Rimini II*.
- 21 9. Objection 9: The term “benefit” is vague and undefined.
- 22 10. Objection 10: This provision seeks to prohibit “copy[ing]” and “access[ing]” “source
23 code,” even though no license—let alone every one of the various licenses—contains
24 these overbroad, vague, and undefined terms and restrictions. *See, e.g.*, Oracle’s Trial
25 Exhibit 705 (Siebel license not restricting access to source code). Further, “access”
26 goes beyond the exclusive rights of the Copyright Act.
- 27 11. Objection 11: This provision seeks to make Rimini’s ability to service one product
28 line contingent on its adherence to the injunction’s terms concerning a different

1 product line, even though the Ninth Circuit recognized that the licenses at issue have
2 meaningful differences in their terms. *See* 879 F.3d at 953. There is no basis in the
3 licenses or the law to tie product lines together, such that failure to comply with the
4 injunction as to one product line precludes lawful activity on a different product line.

5 12. Objection 12: This provision seeks to prohibit forms of cross use not reached by the
6 Ninth Circuit's decision. The Ninth Circuit upheld infringement liability for JD
7 Edwards and Siebel only on the grounds that Rimini performed services under color
8 of a license for an existing customer for future or unknown clients. *See* 879 F.3d at
9 953, 957. The injunction cannot prohibit more than that.

10 13. Objection 13: This provision seeks to prohibit Rimini from copying Oracle Database
11 software using valid Oracle License and Service Agreements, even though the Ninth
12 Circuit only upheld liability on the ground that developer licenses do not permit such
13 copying. *See* 879 F.3d at 960. The injunction cannot reach lawful reproduction of
14 Oracle Database, but may only prevent what has actually been adjudicated unlawful.

15 14. Objection 14: Distribution to a specific licensee of materials that Rimini downloads
16 for that licensee is permitted. *See* 879 F.3d at 962. The Ninth Circuit did not uphold
17 liability based on violations of the distribution right.

18 15. Objection 15: Oracle purports to limit copying of JD Edwards and Siebel only to
19 unmodified, back-up copies; but the Ninth Circuit expressly held that Rimini may
20 "creat[e] development environments for a licensee for various purposes after that
21 licensee [of JD Edwards and/or Siebel] has become a customer of Rimini." 879 F.3d
22 at 958

INJUNCTION PURSUANT TO 17 U.S.C. § 502(a)

1 Good cause being shown, the Court permanently enjoins and restrains Defendant Rimini
 2 Obj. 1, 2, 3
 Street, Inc. and its subsidiaries, affiliates, employees, directors, officers, principals, and agents
 3 (collectively, "Rimini") as follows:
 Obj. 1, 2, 3

4 1. Rimini Street, Inc. shall provide notice of this Section 502 Order to all subsidiaries,
 5 Obj. 1
 Obj. 1, 3, 6, 14
 6 affiliates, employees, directors, officers, principals, and agents that may have any
 involvement whatsoever in reproducing, preparing derivative works from, or
 7 distributing PeopleSoft, JD Edwards, Siebel, or Oracle Database software or
 8 documentation.
 Obj. 1, 3, 6, 14

9 2. Rimini shall not reproduce, prepare derivative works from, or distribute PeopleSoft,
 10 JD Edwards, or Siebel software or documentation in any way unless both of the
 11 Obj. 1, 3, 5
 following conditions are met:
 Obj. 1, 3, 6, 14

12 (a) Rimini shall not reproduce, prepare derivative works from, or
 13 Obj. 1, 3, 4, 5
 distribute PeopleSoft, JD Edwards, or Siebel software or documentation unless solely
 14 in connection with work for a specific customer that has affirmed in writing that the
 15 customer holds a valid, written license agreement for the particular PeopleSoft, JD
 16 Obj. 1, 3, 4, 5
 Edwards, or Siebel software and documentation authorizing Rimini's specific
 17 conduct; and
 Obj. 1, 3, 6, 14

18 (b) Rimini shall not reproduce, prepare derivative works from, or
 19 Obj. 1, 3, 11
 distribute PeopleSoft, JD Edwards, or Siebel software or documentation unless such
 20 conduct is consistent with the remaining terms of this Order.

21 A. PeopleSoft

Obj. 1, 3, 6, 14

Obj. 1, 3, 6

22 3. Rimini shall not distribute PeopleSoft software or documentation or any derivative
 23 works created from or with PeopleSoft software or documentation;
 Obj. 1, 3, 6
 24 4. Rimini shall not reproduce, prepare derivative works from, or use a specific
 25 Obj. 1
 licensee's PeopleSoft software or documentation other than to support the specific
 Obj. 1, 3, 8
 licensee's own internal data processing operations;

Obj. 1, 3, 6

Obj. 1

5. Rimini shall not reproduce, prepare derivative works from, or use PeopleSoft Obj. 1, 3, 7
 1 software or documentation on, with, or to any computer systems other than a specific
 2 licensee's own computer systems; Obj. 1, 3, 6 Obj. 1
 3 Rimini shall not reproduce, prepare derivative works from, or use PeopleSoft
 4 software or documentation on one licensee's computer systems to support,
 5 troubleshoot, or perform development or testing for any other licensee, including,
 6 Obj. 1, 3, 9 specifically, that Rimini shall not use a specific licensee's PeopleSoft environment to
 7 develop or test software updates or modifications for the benefit of any other
 8 licensee;

9 **B. JD Edwards**

Obj. 1, 3, 6, 14

Obj. 1, 3, 6

- 10 Rimini shall not distribute JD Edwards software or documentation or any derivative
 11 works created from or with JD Edwards software or documentation; Obj. 1, 3, 6 Obj. 1
 12 Rimini shall not reproduce, prepare derivative works from, or use a specific Obj. 1, 3, 7
 13 licensee's JD Edwards software or documentation other than on a specific licensee's
 14 own computer systems; Obj. 1, 3, 10
 15 Rimini shall not copy or access JD Edwards software source code; Obj. 1, 3, 6 Obj. 1
 16 Rimini shall not reproduce, prepare derivative works from, or use JD Edwards Obj. 1, 3, 7
 17 software or documentation on, with, or to any computer systems other than a specific Obj. 1, 3, 12, 15
 18 licensee's own computer systems, except to create an unmodified copy of a specific
 19 licensee's software application and documentation for use by that specific licensee in
 20 the event that the production copy of the licensee's software is corrupted or lost; Obj. 1, 3, 6 Obj. 1
 21 Rimini shall not reproduce, prepare derivative works from, or use JD Edwards
 22 software or documentation on one licensee's computer systems to support, Obj. 1, 3, 9, 12
 23 troubleshoot, or perform development or testing for any other licensee, including,
 24 specifically, that Rimini shall not use a specific licensee's JD Edwards environment
 25 to develop or test software updates or modifications for the benefit of any other
 26 licensee;

C. Siebel Obj. 1, 3, 6

12. Rimini shall not distribute or prepare derivative works from Siebel software or documentation; Obj. 1, 3, 10

13. Rimini shall not copy or access Siebel software source code; Obj. 1, 3

14. Rimini shall not reproduce or use Siebel software or documentation on, with, or to Obj. 1, 3, 7 any computer systems other than a specific licensee's own computer systems, except solely to: Obj. 1, 3, 12, 15

 - a. create un unmodified copy of a specific licensee's software application and documentation for the use of that specific licensee in the event that the production copy of the licensee's software is corrupted or lost;
 - b. create an unmodified copy of a specific licensee's software application and documentation for emergency back-up purposes; or,
 - c. create an unmodified copy of a specific licensee's software application and documentation for disaster recovery purposes and related testing; Obj. 1, 3, 6 Obj. 1

15. Rimini shall not reproduce, prepare derivative works from, or use Siebel software or documentation on one licensee's computer systems to support, troubleshoot, or Obj. 1, 3, 9, 12 perform development or testing for any other licensee, including, specifically, that Rimini shall not use a specific licensee's Siebel environment to develop or test software updates or modifications for the benefit of any other licensee;

D. Oracle Database

16. Rimini shall not reproduce, prepare derivative works from, or distribute Oracle Database software.

IT IS SO ORDERED.

DATED:

1 By: _____

2 Hon. Larry R. Hicks

3 United States District Judge

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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2018, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, District of Nevada, using the electronic case filing system. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

GIBSON, DUNN & CRUTCHER LLP

By:s/ Mark A. Perry

Mark A. Perry

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